

## CHAPTER 1018

### REGULATION OF INSURANCE HOLDING COMPANY SYSTEMS

S.F. 2104

**AN ACT** relating to the regulation of insurance company holding systems and providing assessments and penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 521A.1, subsection 3, Code 2014, is amended to read as follows:

3. “Control”, including controlling, controlled by, and under common control with, shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in section 521A.3, subsections 1 through 5, inclusive, or section 521A.4, subsection 11, whichever is applicable, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Sec. 2. Section 521A.1, Code 2014, is amended by adding the following new subsections:

NEW SUBSECTION. 4A. “Enterprise risk” means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including but not limited to anything that would cause the insurer’s risk-based capital to fall into a company-action-level event as set forth in section 521E.3 for insurers or section 521F.4 for health organizations, or would cause the insurer to be in hazardous financial condition pursuant to 191 IAC ch 110.

NEW SUBSECTION. 9A. “Supervisory college” means a temporary or permanent forum for communication and cooperation between regulators charged with supervision of an insurer or its affiliates.

Sec. 3. Section 521A.3, subsection 1, paragraph a, Code 2014, is amended to read as follows:

a. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is first made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has first filed with the commissioner and has sent to such insurer, ~~and such insurer has sent to its shareholders,~~ a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

Sec. 4. Section 521A.3, subsection 1, Code 2014, is amended by adding the following new paragraph:

NEW PARAGRAPH. 0b. For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed

divestiture at least thirty days prior to the cessation of control. The commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer, shall be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in paragraph "a" is otherwise filed, this paragraph "0b" shall not apply.

Sec. 5. Section 521A.3, subsection 2, paragraph a, unnumbered paragraph 1, Code 2014, is amended to read as follows:

The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following ~~information~~:

Sec. 6. Section 521A.3, subsection 2, paragraph a, Code 2014, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (012) An agreement by the person required to file the statement referred to in subsection 1 that the person will provide the annual report specified in section 521A.4, subsection 11A for so long as control exists.

NEW SUBPARAGRAPH. (0012) An acknowledgment by the person required to file the statement referred to in subsection 1 that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.

Sec. 7. Section 521A.3, subsection 4, paragraph a, Code 2014, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) The merger or other acquisition of control is not likely to be hazardous or prejudicial to the insurance-buying public.

Sec. 8. Section 521A.3, subsection 4, paragraph b, Code 2014, is amended to read as follows:

b. The public hearing referred to in paragraph "a" shall be held within thirty days after the commissioner has determined that the statement required by subsection 1 is filed has been completed and contains all the required information set forth in subsection 2, and at least twenty days' notice of the public hearing shall be given by the commissioner to the person filing the statement and to the domestic insurer. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

Sec. 9. Section 521A.3, subsection 4, Code 2014, is amended by adding the following new paragraph:

NEW PARAGRAPH. 0c. If the proposed merger or other acquisition of control will require the approval of more than one commissioner, the public hearing referred to in paragraph "a" may be held on a consolidated basis upon request of the person filing the statement referred to in subsection 1. Such person may file the statement referred to in subsection 1 with the national association of insurance commissioners within five days of making the request for a public hearing. The commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten days of the receipt of the statement referred to in subsection 1. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. The commissioner may attend such hearing in person or by telecommunication.

Sec. 10. Section 521A.4, subsection 2, Code 2014, is amended by adding the following new paragraphs:

NEW PARAGRAPH. 0e. If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the United States securities and exchange commission pursuant to the federal Securities Act of 1933, as amended, or the federal Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed financial statements of the parent corporation that have been filed with the United States securities and exchange commission.

NEW PARAGRAPH. 00e. Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

NEW PARAGRAPH. f. Any other information required by the commissioner by rule or by regulation.

Sec. 11. Section 521A.4, subsection 11, Code 2014, is amended to read as follows:

11. *Disclaimer.* Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.~~ A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty days following receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been granted.

Sec. 12. Section 521A.4, Code 2014, is amended by adding the following new subsection:

NEW SUBSECTION. 11A. Enterprise risk report. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

Sec. 13. Section 521A.4, subsection 12, Code 2014, is amended to read as follows:

12. *Violations.* The failure to file a registration statement or a summary of the registration statement or an enterprise risk report required by this section within the time specified for the filing is a violation of this section.

Sec. 14. Section 521A.5, subsection 1, paragraph a, Code 2014, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (02) Agreements for cost-sharing services and management shall include such provisions as required by rule issued by the commissioner.

Sec. 15. Section 521A.5, subsection 1, paragraph b, subparagraph (5), Code 2014, is amended by striking the subparagraph.

Sec. 16. Section 521A.5, subsection 1, paragraph c, Code 2014, is amended to read as follows:

c. A domestic insurer and a person in its holding company system shall not enter into any of the following transactions, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

(1) All reinsurance pooling agreements.

~~(4) (2)~~ All reinsurance agreements or modifications to such agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the next preceding December 31, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

~~(2) (3)~~ All management agreements, service contracts, tax allocation agreements, guarantees, and all other cost-sharing arrangements involving at least one-half of one percent of the insurer's surplus as of the next preceding December 31. A guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph "c" unless it exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of the next preceding December 31. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph "c".

(4) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 521A.2 or authorized under any other section of this chapter, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this subparagraph.

~~(3) (5)~~ Any material transactions specified by rule which the commissioner determines may adversely affect the interests of the domestic insurer's policyholders.

Sec. 17. Section 521A.5, Code 2014, is amended by adding the following new subsection:  
NEW SUBSECTION. 4. Management of domestic insurers subject to registration.

a. Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

b. Nothing in this section shall preclude a domestic insurer from having or sharing a common management, or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of this section.

c. Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee of the board of directors.

d. The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending or nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

e. The provisions of paragraphs “c” and “d” shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees of the board of directors that meet the requirements of paragraphs “c” and “d” with respect to such controlling entity.

f. An insurer may make application to the commissioner for a waiver from the requirements of this subsection if the insurer’s annual direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, is less than three hundred million dollars. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including but not limited to the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

Sec. 18. Section 521A.6, Code 2014, is amended to read as follows:

**521A.6 Examination.**

1. *Power of commissioner.* Subject to the limitation contained in this section and in addition to the powers which the commissioner has under chapter 507 relating to the examination of insurers, the commissioner ~~may also order an insurer registered under section 521A.4 to produce records, books, or other information papers in the possession of the insurer or its affiliates as reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this chapter. If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information~~ shall have the power to examine any insurer registered under section 521A.4 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

2. *Access to books and records — penalty.*

a. The commissioner may order an insurer registered under section 521A.4 to produce records, books, or other information papers in the possession of the insurer or its affiliates as reasonably necessary or to determine compliance with this chapter.

b. To determine compliance with this chapter, the commissioner may order any insurer registered under section 521A.4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to a contractual relationship, statutory obligation, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of five hundred dollars for each day’s delay, or may suspend or revoke the insurer’s certificate of authority.

3. *Compelling production.* In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. Such a person shall be entitled to the same fees and mileage, if claimed, as a witness in district court, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

2. 4. *Use of consultants.* The commissioner may retain at the registered insurer’s expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner’s staff as shall be reasonably necessary to assist in the conduct of the examination under subsection 1, 2, or 3 of this section. Any persons so retained shall be

under the direction and control of the commissioner and shall act in a purely advisory capacity.

3. 5. *Expenses.* Each registered insurer producing for examination records, books and papers pursuant to subsection 1, 2, or 3 of this section shall be liable for and shall pay the expense of such examination in accordance with section 507.7.

Sec. 19. NEW SECTION. **521A.6A Supervisory colleges.**

1. *Power of commissioner.* With respect to any insurer registered under section 521A.4 and in accordance with subsection 3 of this section, the commissioner shall have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include but are not limited to the following:

a. Initiating the establishment of a supervisory college.  
b. Clarifying the membership and participation of other supervisors in the supervisory college.  
c. Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor.

d. Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing.

e. Establishing a crisis management plan.

2. *Selection of group-wide supervisor.* In the event a group-wide supervisor is established for a supervisory college as described in subsection 1, the commissioner is authorized, but not required, to act as the group-wide supervisor. In order to determine whether the commissioner or another chief insurance regulatory official is the appropriate group-wide supervisor, the commissioner shall, in cooperation with other supervisors, consider the following factors and the relative scale of each:

a. The extent to which the insurance holding company system's insurance operations are domiciled in Iowa.

b. The location where the insurance holding company system is based or the place of domicile of the insurance holding company system's ultimate controlling person.

c. The locations of the insurance holding company system's executive offices.

d. The locations of origin of the insurance business of the insurance holding company system.

e. The locations of the assets and liabilities of the insurance holding company system.

f. The locations of the business operations and activities of the insurance holding company system.

g. Whether another chief insurance regulatory official is acting or seeking to act as the lead group-wide supervisor under a regulatory system that the commissioner determines to be either of the following:

(1) Substantially similar to that provided under the laws of the state of Iowa.

(2) Otherwise sufficient in terms of provision of group-wide supervision, enterprise risk analysis, and cooperation with other chief insurance regulatory officials.

h. Whether a chief insurance regulatory official acting or seeking to act as the lead group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

3. *Commissioner as group-wide supervisor.* If the commissioner is the group-wide supervisor as described in subsection 2, the commissioner is authorized to engage in conducting and coordinating any of the following group-wide supervision activities:

a. Assessing the enterprise risks within the international insurance group in accordance with the "own risk and solvency assessments" requirements of chapter 522.

b. Requesting from any member of an international insurance group subject to the commissioner's supervision information necessary and appropriate to assess enterprise risk in accordance with chapter 522.

c. Communicating with other insurance regulatory officials regarding members within the international insurance group and sharing relevant information, subject to the confidentiality provisions of section 521A.7, through supervisory colleges as set forth in this section.

d. Other group-wide supervisory activities as considered appropriate by the commissioner and as defined by the commissioner by rule.

4. *Expenses — assessment.* Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection 5, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

5. *Supervisory college.* In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with section 521A.6, the commissioner may participate in a supervisory college with other regulators charged with supervision of an insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with section 521A.7, subsection 3, providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within the commissioner's jurisdiction.

Sec. 20. Section 521A.7, Code 2014, is amended to read as follows:

**521A.7 Confidential treatment.**

1. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 521A.6 or 521A.6A, and all information reported pursuant to sections 521A.4 and 521A.5, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.

2. Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information subject to subsection 1.

3. In order to assist in the performance of the commissioner's duties, the commissioner:

a. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 1, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 521A.6A, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality.

b. Notwithstanding paragraph "a", the commissioner may only share confidential and privileged documents, materials, or information filed pursuant to section 521A.4, subsection 11A, with commissioners of states having statutes or regulations substantially similar to subsection 1 of this section and who have agreed in writing not to disclose such information.

c. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding

that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

d. Shall enter into written agreements with the national association of insurance commissioners governing sharing and use of information provided pursuant to this chapter consistent with this subsection that shall do all of the following:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the association with other state, federal, or international regulators.

(2) Specify that ownership of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this chapter remains with the commissioner and the association's use of the information is subject to the direction of the commissioner.

(3) Require prompt notice to be given to an insurer whose confidential information in the possession of the national association of insurance commissioners pursuant to this chapter is subject to a request or subpoena to the association for disclosure or production.

(4) Require the national association of insurance commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the association and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the association and its affiliates and subsidiaries pursuant to this chapter.

4. The sharing of information by the commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

5. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.

6. Documents, materials, or other information in the possession or control of the national association of insurance commissioners pursuant to this chapter shall be confidential by law and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Approved March 26, 2014